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October 15, 1996

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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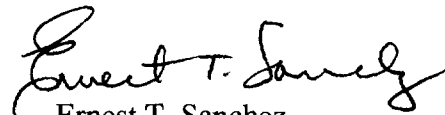
Re: In the Matter of Amendment of Section 73.1125 of the Commission's Rules,
RM-8872, Comments of Xavier University, Cincinnati, OH

Dear Mr. Caton:

Transmitted herewith, on behalf of Xavier University, Cincinnati, OH are an original and nine copies of comments in the above matter.

Please let me know if you have any questions about this filing.

Sincerely,



Ernest T. Sanchez
Counsel for
Xavier University

Enclosures

CC: David Tillotson Esq., Counsel for Apex Associates, Inc.

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In the Matter of)
)
 Amendment of Section 73.1125)
 of the Commission's Rules)
) RM-8872

COMMENTS OF XAVIER UNIVERSITY

I. Introduction

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(106.3 FM Crawfordsville, IN and WVXW (89.5) Maysville, KY. These stations provide a diverse array of local and national (NPR, PRI, CNN and AP) programs. WVXU and its associated stations have won numerous broadcasting awards including the George Foster Peabody Award, Armstrong Award, Ohio State Award, Gabriel Award, United Technologies Award, The Cincinnati Post's Corbett Award, and an unprecedented number of Ohio Educational Broadcasting Awards. WVXU is also one of the few radio stations in America to have ever won a television Emmy Award.

As a significant regional public radio broadcaster, Xavier has a major interest in the Commission's rules including those which govern the requirement that all broadcast stations maintain a main studio within their principal city contour.

II. Regional Public Radio Networks Suffer from The Same Rules Complained of by Apex.

Apex has raised important issues related to the burdens, and lack of logic associated with the existing Commission rules concerning the existing main studio requirement. Xavier agrees with Apex's basic comments and wishes to also point out some aspects of the current rules that needlessly hamper public radio regional networks such as that run by Xavier, where fully licensed satellite stations are fed off the air from a flagship station.

III. Regional Networks Serve a Useful Function--Even Across State Lines

The Federal Government, which provides significant funding to public radio and television pursuant to the Public Broadcasting Act of 1968, has long had an articulated policy of extending the reach of public broadcasting to all Americans. Unfortunately, not every community in the U.S.

has the economic and other resources necessary to create its own locally based and staffed station. This is where various state and regional networks, such as Xavier's, help to close the existing gap.

To some degree this has been recognized by the Commission by the grant of waivers, in some circumstances, to satellite stations that do not meet the main studio requirements. See Nebraska Educational Television Commission, 4 RR 2d 771 (1956). This waiver policy, however, falls short by appearing premised on the idea that it may be reasonable to grant a waiver to satellite stations fed from within a state but perhaps not across state lines.

Xavier wishes to stress that it has no objection or difficulty with the Commission's requirement that when a waiver is granted, local service obligations cannot be ignored. These can be met through such varied means as: 1) local news coverage and other programming with local content and input; 2) Local representation on station advisory bodies; and 3) Listener toll free telephone access to the originating station. Xavier considers these to be reasonable, minimal requirements, but believes that these should be of equal value for waiver purposes whether or not the satellite station is fed across a state line.

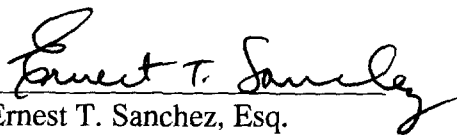
As is pointed out in the Apex Petition, many peculiarities of geography can have the effect of undermining the good intentions of the Commission's rules. Despite their usefulness for many purposes, state lines are rarely the ultimate determinants of where one community of interest ends and another begins. In other words, a waiver request by an out of state station to feed a satellite station off air may have an equal or even greater merit than a similar request from an in state station. Xavier believes that this reality needs to be articulated and incorporated into the Commission's waiver considerations. There should be no blanket prohibition on the grant of a waiver on the main studio requirement because the feeding station is in a different state, provided adequate efforts will

be taken to ensure that local service obligations are met. As the U.S. Court of Appeals requires, the Commission should be obliged to give "a hard look" to all waiver requests.

IV. The Existing Main Studio Rules Financially Penalize Non-State Regional Networks

In Xavier's first hand experience, the existing commission requirements add major unnecessary expenses when a new station is added and operated as part of its network. For example, when WVXM in Manistee, MI was brought on line several years ago, it was necessary for Xavier to purchase a building for one hundred fifteen thousand dollars (\$115,000.) In addition, there are three on site salaried positions associated with the Manistee station which together cost an additional sixty five thousand dollars. This is beyond the equipment and other fixed costs associated with operating this outlet. This financial drain is replicated each time a main studio must be created at a station which is in fact fed off the air. This represents an unconscionable waste of scarce public resources which could be better utilized in other ways. Xavier urges the adoption of Apex's suggestions as modified by these comments.

Respectfully submitted,

By: 
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Dated: October 15, 1996